

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
Plaintiff: STAPLETON FOR COLORADO, a Colorado campaign committee, v. Defendants: KENNEDY ENTERPRISES, LLC, a Colorado limited liability company, and DANIEL KENNEDY, a Colorado resident	▲ COURT USE ONLY ▲
Attorney for Defendants Name: Susan Klopman #33179 Address: H&K Law, LLC 3900 E. Mexico Ave., Ste. 330 Denver, CO 80210 Phone Number: 303-749-0659 E-mail: sklopman@hklawllc.com	Case Number: 18CV32348 Division: 215 Courtroom:
AMENDED ANSWER	

Defendants, Kennedy Enterprises, LLC and Daniel Kennedy, (collectively, “Defendants”), by and through counsel, Susan Klopman of H& K Law, LLC, answer Plaintiff’s Complaint as stated herein.

I. GENERAL ALLEGATIONS

1. Defendants deny the allegations in paragraph 1 of the Complaint. Kennedy Enterprises, LLC (the “Company”) has been in the business of collecting signatures for candidates and petitions in Colorado for over twenty years. Contrary to the inflammatory allegations in the Complaint, it adheres to Colorado law and engages in ethical practices, always.

That is a primary reason why Plaintiff chose to work with Defendants in the first place. As they have done many times in the past, Defendants subcontracted out the entirety of the signature gathering work to a third party, Taylor Petition Management, LLC (“TPM”). TPM did hire qualified independent contractors to gather signatures, but did not use “illegal shadow circulators” as alleged.

2. Defendants deny the allegations in paragraph 2 of the Complaint. The Company did not work for or have a contract to gather signatures for any other statewide candidate, as alleged. In its 2017 proposal to Plaintiff, Defendants suggested that Plaintiff submit the signatures gathered early so that there would not be an issue of potential duplicate signatures submitted by another gubernatorial candidates.

3. Defendants deny the allegations in paragraph 3 of the Complaint as to any concealment. Defendants are without sufficient knowledge to admit or deny the allegations about when or how the Plaintiff was contacted by the reporter or what Plaintiff did or didn’t do in response. Defendants admit that a representative for Plaintiff asked Mr. Kennedy about a Velasquez, first Alejandro Velasquez and later Dan Alejandro Velasquez. Mr. Kennedy replied truthfully that he had never employed Mr. Velasquez. Prior to replying, Defendants confirmed with TPM whether Mr. Velasquez had ever worked to gather signatures on behalf of Plaintiff and was told no. Defendants truthfully had never heard of a Daniel Velasquez and confirmed the same to Plaintiff. Defendants admit that Mr. Kennedy wrote to the Colorado Secretary of State (“SOS”) stating the truth of what he knew and had inquired about at the time – that he did not know Mr. Velasquez and had not employed him to collect signatures on behalf of Plaintiff. Defendants deny all other allegations in paragraph 3 of the Complaint.

4. Defendants deny the allegations in paragraph 4 of the Complaint. Defendants affirmatively state that on the evening of April 9, 2018, Mr. Kennedy received a phone call from Michael Fortney, associated with Plaintiff, in which Mr. Fortney provided new information to Mr. Kennedy about Mr. Velasquez's alleged involvement in signature gathering. Armed with this new information, Mr. Kennedy again inquired of TPM as to Mr. Velasquez's involvement and learned, for the first time, that he had been engaged as an independent contractor, but had not engaged in any illegal shadow circulation, as alleged. Mr. Velasquez was engaged as an independent contractor for a subcontractor of the Company without Defendants' knowledge or specific approval.

5. Defendants admit that a representative of Plaintiff demanded a refund and that if Defendants did not pay, a lawsuit would be filed. Defendants deny the remaining allegations in paragraph 5 of the Complaint.

6. Defendants deny the allegations in paragraph 6 of the Complaint. This case does not involve Mr. Kennedy's or his Company's deception or concealment or breach of contract or other wrongful conduct. The Company performed its contract with Plaintiff diligently and obtained sufficient signatures to enable the Colorado SOS to determine that Walker Stapleton's name could be placed on the ballot for the Republican primary election for Colorado's next Governor. Rather, this case involves Plaintiff's hasty choice to renounce all signatures gathered by Defendants based upon one voicemail (which apparently contained other untruths). Plaintiff caused its own damages by asking the SOS to disqualify all signatures gathered by Defendants and remove Walker Stapleton's name from the primary election ballot. Plaintiff now seeks a full

refund from Defendants for their lawful conduct in compliance with the contract and Colorado law in order to fund the ongoing campaign.

II. PARTIES

7. Upon information and belief, Defendants admit the allegations in paragraph 7 of the Complaint.

8. Defendants admit the allegations in paragraph 8 of the Complaint.

9. Defendants admit the allegations in paragraph 9 of the Complaint.

III. JURISDICTION AND VENUE

10. Defendants admit the allegations about their addresses and do not contest the personal jurisdiction of this Court.

11. Defendants do not contest the Court's subject matter jurisdiction.

12. Defendants do not contest venue in this Court pursuant to the Company's contract with Plaintiff.

IV. FACTUAL ALLEGATIONS

A. The Nomination Process for Major Party Candidates in Colorado

13. The allegations of paragraph 13 of the Complaint are not directed to Defendants and so Defendants do not respond to the same.

14. Upon information and belief, Defendants admit the allegations in paragraph 14 of the Complaint.

15. Upon information and belief, Defendants admit the allegations in paragraph 15 of the Complaint.

16. Upon information and belief, Defendants admit the allegations in paragraph 16 of the Complaint.

17. Upon information and belief, Defendants admit the allegations in paragraph 17 of the Complaint.

18. Upon information and belief, Defendants admit the allegations in paragraph 18 of the Complaint.

19. Upon information and belief, Defendants admit the allegations in paragraph 19 of the Complaint.

20. Upon information and belief, Defendants admit the allegations in paragraph 20 of the Complaint.

21. Upon information and belief, Defendants admit the allegations in paragraph 21 of the Complaint.

22. Defendants state that the allegations of paragraph 22 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, Defendants state that the Colorado statutes governing nominating petitions and any case law interpreting them speak for themselves.

23. Defendants state that the phrase “these legal requirements” is vague and, as such, Defendants are without sufficient information to admit or deny this allegation. Defendants admit that Mr. Kennedy is aware of Colorado law governing nominating petitions and signature gathering.

24. The allegations of paragraph 24 of the Complaint are not directed to Defendants and so Defendants do not respond to the same.

B. Stapleton for Colorado Contracts with Kennedy to Collect Signatures

25. Defendants admit that the Company entered into a contract with Plaintiff.

26. Defendants admit that the contract speaks for itself and deny any allegations in paragraph 26 of the Complaint inconsistent with the contract.

27. Defendants admit that the contract speaks for itself and deny any allegations in paragraph 27 of the Complaint inconsistent with the contract.

28. Defendants deny the allegations in paragraph 28 of the Complaint.

29. Defendants admit that the contract speaks for itself and deny any allegations in paragraph 29 of the Complaint inconsistent with the contract.

30. Defendants admit the allegations contained in paragraph 30 of the Complaint.

C. Kennedy's Misrepresentations to the Stapleton Campaign and the Secretary of State

31. Defendants admit the allegations in paragraph 31 of the Complaint.

32. Defendants admit the allegations in paragraph 32 of the Complaint.

33. Defendants admit they provided the information alleged in paragraph 33 of the Complaint to Plaintiff for its own use and denies all remaining allegations in paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in paragraph 34 of the Complaint.

Defendants affirmatively state that the list Mr. Kennedy provided was accurate and complete to the best of his knowledge.

35. The allegations in paragraph 35 of the Complaint are not specific enough to allow Defendants to admit or deny them. Defendants admit that Mr. Kennedy told representatives of

Plaintiff that he had been in business over 20 years and had never failed to qualify a candidate for whom his Company circulated petitions for the ballot, and deny all remaining allegations.

36. Defendants deny the allegations in paragraph 36 of the Complaint and affirmatively state that a suggestion to turn in signatures early was communicated in the Company's 2017 proposal to Plaintiff so that there would not be an issue of potential duplicate signatures submitted by other gubernatorial candidates.

37. Defendants are without sufficient information to admit the allegations in paragraph 37 of the Complaint and therefore deny them.

38. Upon information and belief, Defendants admit the allegations contained in paragraph 38 of the Complaint.

39. Defendants admit that Mr. Kennedy reported that circulators working for other candidates were following the Company's circulator teams and potentially encouraging persons who had just signed petitions for Plaintiff to sign petitions for their candidates. Defendants deny the remaining allegations in paragraph 39 of the Complaint.

40. Defendants deny the allegations in paragraph 40 of the Complaint.

41. Defendants admit the allegations in paragraph 41 of the Complaint.

42. Defendants are without information or knowledge sufficient to admit or deny the allegations contained in paragraph 42 of the Complaint, and therefore deny the same.

43. Defendants admit the allegations in paragraph 43 of the Complaint.

44. Upon information and belief, Defendants admit the allegations in paragraph 44 of the Complaint.

D. Kennedy's Fraudulent Concealment – Police Contact with Circulator

45. Defendants deny the allegations in paragraph 45 of the Complaint and specifically deny that Defendants were concealing important information from Plaintiff.

46. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 46 of the Complaint, and therefore deny the same.

47. Defendants deny that this was the second time Mr. Kennedy had been contacted about the police contact. Defendants admit the remaining allegations in paragraph 47 of the Complaint.

48. Defendants admit that Mr. Kennedy provided contact information for a circulator named Mr. Exantus. Defendants deny the remaining allegations in paragraph 48 of the Complaint.

49. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 49 of the Complaint, and therefore deny the same

50. Upon information and belief, Defendants admit the allegations in paragraph 50 of the Complaint.

51. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 51 of the Complaint as to what Mr. Exantus stated, and therefore deny the same.

52. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 52 of the Complaint, and therefore deny the same. Defendants affirmatively state that Mr. Kennedy had no prior knowledge of the allegations in this paragraph.

53. Upon information and belief, Defendants admit the allegations in paragraph 53 of the Complaint.

54. Upon information and belief, Defendants admit the allegations in paragraph 54 of the Complaint.

55. Defendants admit the allegations in paragraph 55 of the Complaint.

56. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 56 of the Complaint, and therefore deny the same.

E. Kennedy's Fraudulent Concealment – Polly Lawrence Campaign

57. The allegations in paragraph 57 of the Complaint and not directed to Defendants and so Defendants do not provide a response.

58. Upon information and belief, Defendants admit the allegations in paragraph 58 of the Complaint.

59. Defendants deny the allegations in paragraph 59 of the Complaint.

60. Defendants deny the allegations in paragraph 60 of the Complaint as to Defendants and are without sufficient information or knowledge to admit or deny the allegations as to Blitz Canvassing.

61. Defendants deny the allegations in paragraph 61 of the Complaint.

62. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 62 of the Complaint, and therefore deny the same.

63. Defendants deny the allegations in paragraph 63 of the Complaint.

64. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 64 of the Complaint, and therefore deny the same.

65. Defendants deny the allegations in paragraph 65 of the Complaint.

66. Defendants admit the allegations in paragraph 66 of the Complaint and affirmatively state that Defendants did not have prior knowledge of the use of “trainees”.

67. Defendants admit the allegations in paragraph 67 of the Complaint and affirmatively state that Defendants did not have prior knowledge of the use of “trainees” to submit such names to Plaintiff.

68. Defendants admit the allegations in paragraph 68 of the Complaint and affirmatively state that Defendants could not make such an offer because Mr. Kennedy first learned of the use of “trainees” for Plaintiff after Plaintiff had submitted the signatures to the SOS.

69. Defendants deny the allegations in paragraph 69 of the Complaint and affirmatively state that a suggestion to turn in signatures early was communicated in the Company’s 2017 proposal to Plaintiff so that there would not be an issue of potential duplicate signatures submitted by other gubernatorial candidates.

F. Kennedy’s Fraudulent Concealment – The Velasquez Recording

70. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 70 of the Complaint, and therefore deny the same.

71. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 71 of the Complaint, and therefore deny the same

72. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 72 of the Complaint, and therefore deny the same.

73. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 73 of the Complaint, and therefore deny the same.

74. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 74 of the Complaint, and therefore deny the same

75. Defendants admit that Mr. Fortney called Mr. Kennedy to ask whether Daniel Velasquez worked for him and deny the remaining allegations in paragraph 75 of the Complaint. Plaintiff never provided Defendants with a copy of the voicemail from Mr. Velasquez, which upon information and belief, contained several untrue statements.

76. Defendants affirmatively state that Mr. Kennedy contacted TPM to inquire about whether a Daniel Velasquez circulated petitions for Plaintiff and received a “no” answer. Defendants then communicated that information to Plaintiff. Defendants deny the remaining allegations in paragraph 76 of the Complaint.

77. Defendants admit the allegations in paragraph 77 of the Complaint.

78. Defendants admit the allegations in paragraph 78 of the Complaint.

79. Upon information and belief, Defendants admit the allegations in paragraph 79 of the Complaint.

80. Defendants deny the allegations in paragraph 80 of the Complaint in that Mr. Kennedy did not request the assistance of Plaintiff. Defendants admit that the attorney for Plaintiff provided assistance and deny all remaining allegations in paragraph 80 of the Complaint.

81. Defendants admit the allegations in paragraph 81 of the Complaint and affirmatively state that, after inquiry, this information was true and accurate to Mr. Kennedy's knowledge at the time.

82. Defendants affirmatively state that they learned of the "trainees" at the same time Plaintiff did and understood Plaintiff's concerns regarding the voicemail from Mr. Velasquez. Defendants deny the remaining allegations in paragraph 82 of the Complaint.

83. Defendants deny the allegations in paragraph 83 of the Complaint.

84. Defendants deny the allegations in paragraph 84 of the Complaint.

85. Defendants deny the allegations in paragraph 85 of the Complaint.

G. The Stapleton Campaign Discovers the Truth

86. The allegations in paragraph 86 of the Complaint are not directed to Defendants and so they do not respond.

87. Defendants admit the allegations in paragraph 87 of the Complaint.

88. Upon information and belief, Defendants admit the allegations in paragraph 88 of the Complaint.

89. Upon information and belief, Defendants admit the allegations in paragraph 89 of the Complaint.

90. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 90 of the Complaint, and therefore deny the same. Defendants affirmatively state that they had no prior knowledge of the allegations in this paragraph.

91. Defendants admit that Mr. Fortney called Mr. Kennedy to report new information about the potential involvement of Mr. Velasquez and that, relying upon prior information

provided him by TPM, Mr. Kennedy denied knowledge of Mr. Velasquez. Defendants further admit that after this call, Mr. Kennedy again inquired of TPM and later heard back, for the first time, that TPM had just discovered that Mr. Velasquez had been an independent contractor working through TPM on behalf of Plaintiff. Defendants deny the remaining allegations in paragraph 91 of the Complaint.

92. Upon information and belief, Defendants admit the allegations in paragraph 92 of the Complaint.

93. Defendants deny the allegations in paragraph 93 of the Complaint. Defendants affirmatively state that, upon information and belief, Mr. Fortney learned about issues with the Polly Lawrence campaign and asked Mr. Kennedy about it. Mr. Kennedy, who was not involved in the Polly Lawrence campaign, passed along information he had learned from TPM after the signatures had been submitted by Plaintiff to the SOS.

94. Defendants deny the allegations in paragraph 94 of the Complaint.

H. Stapleton For Colorado Withdraws Its Petitions

95. Defendants admit that the letter attached as Exhibit 2 to the Complaint speaks for itself and contains defamatory statements about Defendants. Defendants deny the remaining allegations in paragraph 95 of the Complaint.

96. Defendants deny the allegations in paragraph 96 of the Complaint.

97. Upon information and belief, Defendants deny the allegations in paragraph 97 of the Complaint.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (Breach of Contract Against Kennedy Enterprises, LLC)

98. Defendants incorporate by reference all previous statements in paragraphs 1-97 above.

99. Defendants admit the parties entered into an enforceable contract.

100. Defendants admit that the contract speaks for itself and deny any allegations inconsistent with the contract.

101. Defendants deny the allegations in paragraph 101 of the Complaint.

102. Defendants deny the allegations in paragraph 102 of the Complaint.

103. Defendants deny the allegations in paragraph 103 of the Complaint.

104. Defendants deny the allegations in paragraph 104 of the Complaint.

105. Defendants deny the allegations in paragraph 105 of the Complaint.

106. Defendants deny the allegations in paragraph 106 of the Complaint.

107. Defendants deny the allegations in paragraph 107 of the Complaint.

108. Defendants deny the allegations in paragraph 108 of the Complaint.

109. Defendants deny the allegations in paragraph 109 of the Complaint.

110. Defendants deny the allegations in paragraph 110 of the Complaint.

SECOND CLAIM FOR RELIEF

(Fraudulent Misrepresentation against Kennedy Enterprises, LLC and Daniel Kennedy)

111. Defendants incorporate by reference all previous statements in paragraphs 1-110 above.

112. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 112 of the Complaint, and therefore deny the same.

113. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 113 of the Complaint, and therefore deny the same.

114. Defendants admit that Mr. Fortney asked Mr. Kennedy if Mr. Velasquez worked for him and deny the remaining allegations in paragraph 114 of the Complaint.

115. Defendants deny the allegations in paragraph 115 of the Complaint.

116. Defendants deny the allegations in paragraph 116 of the Complaint.

117. Defendants deny the allegations in paragraph 117 of the Complaint.

118. Defendants deny the allegations in paragraph 118 of the Complaint.

119. Defendants deny the allegations in paragraph 119 of the Complaint.

120. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 120 of the Complaint, and therefore deny the same.

121. Defendants deny the allegations in paragraph 121 of the Complaint.

122. Defendants admit the allegations in paragraph 122 of the Complaint.

123. Defendants deny the allegations in paragraph 123 of the Complaint.

THIRD CLAIM FOR RELIEF
(Fraudulent Concealment against Kennedy Enterprises, LLC and Daniel Kennedy)

124. Defendants incorporate by reference all previous statements in paragraphs 1-123 above.

125. Defendants deny the allegations in paragraph 125 of the Complaint.

126. Defendants deny the allegations in paragraph 126 of the Complaint.

127. Defendants deny the allegations in paragraph 127 of the Complaint.

128. Defendants deny the allegations in paragraph 128 of the Complaint.

129. Defendants deny the allegations in paragraph 129 of the Complaint.

130. Defendants deny the allegations in paragraph 130 of the Complaint.

131. Defendants deny the allegations in paragraph 131 of the Complaint.

132. Defendants deny the allegations in paragraph 132 of the Complaint.

133. Defendants deny the allegations in paragraph 133 of the Complaint.

134. Defendants deny the allegations in paragraph 134 of the Complaint.

135. Defendants deny the allegations in paragraph 135 of the Complaint.

136. Defendants deny the allegations in paragraph 136 of the Complaint.

FOURTH CLAIM FOR RELIEF
(Civil Theft against Daniel Kennedy)

137. Defendants incorporate by reference all previous statements in paragraphs 1-136 above.

138. Defendants deny the allegations in paragraph 138 of the Complaint.

139. Defendants deny the allegations in paragraph 139 of the Complaint.

140. Defendants state that the allegations in paragraph 140 of the Complaint constitute a legal conclusion to which no response is required.

141. Defendants state that the allegations in paragraph 141 of the Complaint constitute a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations as to their conduct.

142. Defendants deny the allegations in paragraph 142 of the Complaint.

FIFTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty against Kennedy Enterprises, LLC and Daniel Kennedy)

143. Defendants incorporate by reference all previous statements in paragraphs 1-142 above.

144. Defendants deny the allegations in paragraph 144 of the Complaint.

145. Defendants are without information or knowledge sufficient to admit or deny the allegations in paragraph 145 of the Complaint, and therefore deny the same.

146. Defendants deny the allegations in paragraph 146 of the Complaint.

147. Defendants deny the allegations in paragraph 147 of the Complaint.

148. Defendants deny the allegations in paragraph 148 of the Complaint.

149. Defendants deny the allegations in paragraph 149 of the Complaint.

150. Defendants deny the allegations in paragraph 150 of the Complaint.

SIXTH CLAIM FOR RELIEF
(Unjust Enrichment – In the Alternative to the First Cause of Action against Kennedy Enterprises, LLC)

151. Defendants incorporate by reference all previous statements in paragraphs 1-150 above.

152. Defendants deny that Plaintiff is entitled to recover on the allegations in paragraph 152 of the Complaint.

153. Defendants deny the allegations in paragraph 153 of the Complaint.

154. Defendants deny the allegations in paragraph 154 of the Complaint.

155. Defendants deny the allegations in paragraph 155 of the Complaint.

156. Defendants deny the allegations in paragraph 156 of the Complaint.

157. Defendants deny the allegations in paragraph 157 of the Complaint.

158. Defendants deny the allegations in paragraph 158 of the Complaint.

159. Defendants deny the allegations in paragraph 159 of the Complaint.

160. Defendants deny the allegations in paragraph 160 of the Complaint.

All allegations not specifically admitted herein are denied.

The remaining paragraphs of the Complaint constitute a prayer to relief to which no response is required. To the extent a response is required, Defendants deny that Plaintiff is entitled to any relief whatsoever.

VI. DEFENSES

1. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.
2. Plaintiff's claims fail due to the unforeseen, intervening action of a third party.
3. Plaintiff's claims fail because at all times Defendants acted properly, lawfully, and in good faith.
4. Plaintiff's claims fail due to lack of causation.
5. Plaintiff's claims fail due to its own ratification of/consent to the use of "trainees" and waiver of any argument otherwise.
6. Plaintiff's claims fail because its reliance was unjustified.
7. Plaintiff's claims fail due to the negligence of a non-party.
8. Plaintiff's claims fail due to Plaintiff's failure to mitigate its damages and in fact because Plaintiff caused its own damages.
9. Plaintiff's claims fail due to its own abuse of process.

Defendants reserve the right to raise other defenses discovered in this lawsuit.

VII. PRAYER FOR RELIEF

WHEREFORE, Defendants Kennedy Enterprises, LLC and Daniel Kennedy, request that the Court enter judgment in favor of Defendants and against Plaintiff on each of Plaintiff's

claims, award Defendants its costs and expenses, including reasonable attorney fees, and grant such other relief to Defendants as the Court deems just and proper.

VIII. JURY DEMAND

DEFENDANTS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

DATED September 12, 2018

Respectfully submitted,

/s/ Susan P. Klopman
Susan P. Klopman, #33179
H&K Law, LLC
3900 E. Mexico Ave, Ste 330
Denver, CO 80210
sklopman@hklawllc.com
303.749.0659
ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2018 a copy of the foregoing **AMENDED ANSWER TO COMPLAINT** was filed and served via CCE to the following:

Stanley Garnett
Chris Murray
Amanda Houseal
Brownstein Hyatt Farber Schreck, LLP
Attorneys for Plaintiff

/s/Amy I. Stotts
Amy I. Stotts